

COMPLIANCE SCREENING FOR EPA PARTNERSHIP PROGRAMS: POLICY OVERVIEW

Partnership Programs

EPA has many programs that engage external organizations in voluntary, cooperative efforts to achieve superior environmental results. As a group, these programs are known as “partnership programs.” Partnership programs range from those that provide regulatory relief in exchange for a commitment to superior environmental performance to those that encourage businesses to adopt sound environmental practices in the interest of their own bottom line. All of EPA’s partnership programs work with external parties to find more effective solutions to problems of human health and the environment, often by preventing pollution and saving money. These programs have been productive and are integral to EPA’s efforts to reinvent the way it does business.

Purpose of Guidance

The purpose of this guidance is (1) to explain the purpose and uses of compliance screens; (2) to identify specific circumstances in which screening is expected as a matter of Agency-wide policy; and (3) to help program managers determine whether they need compliance screens in other situations, and if so, develop and conduct the appropriate type of screen for their programs.

In certain circumstances, it is important for partnership programs to obtain information on the enforcement and compliance history of potential or current program participants. For example, such a review may be valuable in advance of highly-visible public events involving top Agency officials or in determining who will be allowed to participate in the program. A review of such information is required for certain types of programs or situations. Even where screening is not strictly necessary, there may be programs or events which would benefit from consideration of participants’ compliance and enforcement histories. In such cases, partnership programs are strongly encouraged to conduct screening. Program managers should use this guidance to design and conduct screens appropriate for their programs.

The process of collecting compliance information is informally referred to as “compliance screening.” A compliance screen is a summary report describing the history of federal and state enforcement actions taken against a company or facility due to non-compliance with environmental statutes and regulations. A compliance screen can be used to collect many different types of information, including data about planned, pending, and ongoing enforcement actions against a company or facility; any available information on civil enforcement history under all Federal environmental laws; and past and ongoing civil and criminal violations.

Scope of This Guidance

This guidance was designed to apply to all of EPA's partnership programs. It applies to current as well as future Headquarters and Regional partnership programs. Managers should use this guidance to determine whether and to what extent screening is appropriate for other Agency programs that involve external parties. Screening is required in the three situations described in this guidance (page 3). Even where screening is not mandated, managers are expected to determine whether their program might benefit from a compliance screen and, using this guidance, implement one designed for their program.

Reasons for Compliance Screening

The compliance screening process serves many purposes for EPA's partnership programs. The primary purpose of compliance screening is to help ensure that EPA program managers are fully aware of the compliance status and history of program participants in situations where the information may be relevant. Specific reasons for compliance screening include the following:

- ! To maintain the integrity and credibility of EPA's partnership programs by ensuring that recognition and awards are presented to appropriate organizations.
- ! To ensure that for programs designed to demonstrate environmental leadership and regulatory accountability, only appropriate companies participate. This is especially important when a program offers benefits such as regulatory relief or reduced enforcement oversight.
- ! To ensure consistent minimum requirements and standards for regulated entities (i.e., ensure a level playing field).
- ! To support the enforcement work of the Agency. (If an enforcement action is pending, recognition may complicate or undermine the procedure.)
- ! To avoid the perception of inconsistent treatment by EPA of a particular company.

Appropriate Uses of the Compliance Screening Process

Compliance screening can be used by any partnership program that wishes to gather information about the enforcement and compliance history of its participants. In most cases (with the exception of the three situations noted in the next section, beginning on page 3, for which screening is required), partnership program offices¹ may decide whether or not they want to make use of the compliance screening process. They may decide whether or not to conduct a screen and what to do with the information once they receive it. In addition, program offices may decide when to use the process; that is, they may choose to conduct a screen upon or before enrolling a company in the program, or they may choose to conduct a screen before having a certain event.

¹ "Partnership program office" refers to the program office in which the partnership program resides. Guidance on delegation of functions within each office is provided below under "Roles and Responsibilities for Screening."

Finally, with limited exceptions, program offices are free to determine what types of enforcement findings present concerns for their programs, and what decisions should result from information that is collected.

It is important for all program offices to decide ahead of time whether screens will be necessary, and if they are, how the resulting information will be used. Planning ahead should eliminate situations in which necessary information cannot be gathered in time for an event to take place. In all cases, even when screening is not required by this guidance, program offices are strongly encouraged to consider whether screening is appropriate.

Requirements for Using the Guidance

In a limited number of cases, compliance screening is expected for partnership programs as a matter of Agency policy. Following are three situations in which compliance screening is expected. In other cases, programs are expected to evaluate the need for screening, but decisions on whether and how to screen are discretionary.

1. *Regulatory Flexibility Programs:* Compliance screens are required prior to acceptance into a Regulatory Flexibility Program. A **“Regulatory Flexibility Program”** is defined as a program that offers its participants some form of regulatory relief or flexibility from EPA. This relief may come in the form of alternative legal requirements or enforcement benefits such as reduced compliance inspections or enforcement penalties.² These programs require rigorous screens to ensure that the company or facility seeking participation will make an appropriate program partner. Examples of the types of programs requiring eligibility screens are Project XL and the Environmental Leadership Program.

2. *High-Visibility Recognition:* Compliance screens are required prior to recognition in the context of a high-visibility event. **“High-visibility recognition”** is defined as involving high-level government officials, including but not limited to White House and Congressional officials, EPA’s Administrator, Deputy Administrator, Assistant Administrators, Deputy Assistant Administrators, General Counsel, Associate Administrators, Regional Administrators, and Deputy Regional Administrators. Such recognition events can include ceremonies, plaques, certificates, or other written or spoken material in which a high-level official is present or endorses a company. Specific examples may include press releases, speeches, or articles in trade magazines, brochures, or pamphlets in which a high-level Agency official endorses or rewards a partnership program participant. If the Agency is planning to recognize a program participant in a high-level event, and significant time has passed since the last time that company or facility had a compliance screen, an additional screen should be carried out. For example, where a Regulatory Flexibility

² This guidance does not apply to decisions made under or applications of the following policies: the “Incentives for Self-Policing; Discovery, Disclosure, Correction and Prevention of Violations” (i.e., EPA’s Audit Policy), “Policy on Compliance Incentives for Small Businesses” (i.e., Small Business Policy), and Policy on Flexible State Enforcement Responses to Small Community Violations (i.e., Small Community Policy).

Program participant is being recognized publicly and significant time has passed since the initial eligibility screen, an additional screen should be conducted prior to the high-visibility event.

3. *High-Visibility Recognition Combined with Broad-Based Claims:* Compliance screens are required prior to making a broad-based environmental claim about a company or facility in the context of a high-visibility recognition event. Where broad claims are made about a program participant's overall environmental record or achievements, that program should have a more comprehensive screen than a program which does not make such broad representations.

“Broad-based claims” are defined as statements or awards that endorse participants as environmental leaders. Statements or awards that use terms like “environmental leader,” “environmental champion,” or similar words as a broad endorsement of a participant's environmental performance fall into this category. If acceptance and participation in a program itself signify an endorsement of the company's/facility's environmental performance or leadership, then a screen should be conducted prior to enrollment. This category does not include awards recognizing specific program achievements or accomplishments (e.g., recognition for installing energy-efficient lighting in the Energy Star/Green Lights Partnership). Nor does the category include situations in which certain products carry symbols (such as the Energy Star logo) that simply document that a product meets certain performance criteria.

4. *Discretionary Use of Screening:* Even when compliance screening is not required, program managers are expected to determine whether screening is necessary for their programs. There may be programs or events which do not fit any of the three situations that require screening but could benefit from compliance screening. These programs have full discretion to decide when to screen (pre-recognition or eligibility screening) and what type of screen to use. Programs that make the decision to do screening in these situations may consult with OECA about designing and implementing the screen.

In determining whether a screen should be a part of their program, partnership program offices should consider the purpose of their program and whether a screen would aid in its success; if so, they should determine what elements of the screen would best serve the program's goals and objectives.

Generally, eligibility screening is useful in situations where it is important to have a reliable working partner. Program managers, therefore, should consider whether a company's or facility's performance record indicates sufficient reliability for program participation (e.g., a demonstrated ability or inability to maintain operations without causing environmental or other harms, to meet basic compliance obligations, to achieve desired levels of public accountability and public right-to-know, etc.). Such considerations may be particularly important for programs that rely on a company's/facility's consistent performance to achieve a specific program result or where public perception/participation is a factor.

Similarly, pre-recognition screens may be useful to ensure that the Agency recognizes and awards appropriate organizations. If any of the following factors are present, a pre-recognition screen could provide useful information in advance of the planned event:

- public event/press release recognizing/awarding the program participant,
- possible negative effects on the credibility of a program should an enforcement action (e.g., civil or criminal violation) come to light during or after a recognition event, or
- possible negative effects on enrollment/participation in a program should an enforcement action come to light during or after a recognition event.

The scope of a pre-recognition screen can be tailored to meet the needs of a partnership program. A program can choose compliance screening elements listed below (p. 8) that provide information relevant to that program.

Decisions Resulting from Compliance Screening³

If compliance screening reveals incidences of non-compliance or other enforcement concerns, a decision must be made on whether these facts affect participation in or recognition of a partnership program. The degree to which partnership programs have discretion to make decisions about partner eligibility or recognition depends upon the situation. EPA's general policy is the following:

1. *Regulatory Flexibility Programs:* For programs offering regulatory flexibility, recent criminal (within the last five years) or certain civil (within the last three years) enforcement activity (described in Attachment A) will make participation inappropriate. In those circumstances where this policy indicates that participation is inappropriate, a program may believe that the situation warrants an exception. Any decision to make an exception to this policy should be made at the level of Assistant Administrator or Regional Administrator. In addition, where the program wants to make an exception, concurrence by the Office of Enforcement and Compliance Assurance (OECA) is needed.

2. *High-Visibility Recognition:* For programs conducting high-visibility events, recent criminal (within the last five years) or certain civil (within the last three years) enforcement activity (described in Attachment B) will make high-visibility recognition inappropriate. In those circumstances where this policy indicates that recognition is inappropriate, a program may believe that the situation warrants an exception. Any decision to make an exception to this policy should be made at the level of Assistant Administrator or Regional Administrator. Note that OECA concurrence is not necessary, except where high-visibility recognition is for a program involving broad-based claims, as discussed immediately below.

³See attachments for detailed information on circumstances that warrant exclusion and decisions resulting from compliance screening.

3. *High-Visibility Recognition Combined with Broad-Based Claims:* For programs making broad-based claims about participants in the context of high-visibility recognition events, recent criminal (within the last five years) or certain civil (within the last three years) enforcement activity (described in Attachment B) will make participation inappropriate. In those circumstances where this policy indicates that participation is inappropriate, a program may believe that the situation warrants an exception. Any decision to make an exception to this policy should be made at the level of Assistant Administrator or Regional Administrator. In addition, where the program wants to make an exception, OECA concurrence is needed.

4. *Discretionary Use:* For any program to which none of the above situations apply, the office managing the program has discretion as to whether any screen is needed and how the results of the screen will be used. Of course, program offices may choose to exclude participants on grounds other than those listed in this guidance. Partnership programs are strongly encouraged to conduct screening in cases other than those requiring screening; however, the decision on screening rests in the office's discretion. If screening is conducted and enforcement activity is discovered, the program office retains discretion regarding participation. All decisions based on information collected should be made by the appropriate senior management official (i.e., DAA-, DRA-level, or delegatee). Note that OECA concurrence is not necessary.

It is important to make these decisions well ahead of the time the information is needed, so that ample time is allowed for information collection and review.

Roles and Responsibilities for Screening

Generally, the Deputy Assistant Administrator or Deputy Associate Administrator for the office that manages the partnership program or the Deputy Regional Administrator (as the Senior Enforcement Manager in the Region) is accountable for designing compliance screens, ensuring they are properly conducted, and making decisions about the effect of information found in the screening process.

However, where screens are required (for Regulatory Flexibility Programs and High-Visibility Recognition and/or Broad-Based Claims), decisions to deviate from the guidance should be made by the Assistant Administrator or Regional Administrator. If the program is a Regulatory Flexibility Program or has High-Visibility Recognition Combined with Broad-Based Claims, OECA concurrence is needed to make an exception.

In addition, if the program is a Regulatory Flexibility Program run out of Headquarters, the design of the screen should be done in consultation with OECA.

For existing programs, the responsible Deputy Assistant Administrator, Deputy Associate Administrator, or Deputy Regional Administrator for the office managing the program should review existing procedures to ensure that where screening is necessary, a screening process is in place.

For newly created partnership programs, each Deputy Assistant Administrator, Deputy Associate Administrator, or Deputy Regional Administrator for the office managing the program is responsible for deciding if screens are needed and, if they are, for developing appropriate compliance screens for participation and/or recognition.

In most cases, it is expected that the Deputy Assistant Administrator, Deputy Associate Administrator, or Deputy Regional Administrator will delegate many screening responsibilities and activities to the manager of the partnership program. This person will carry out daily operations for screening. For discretionary screening situations, the DAA or DRA should decide ahead of time which decisions should be made at his or her level and which can be delegated to other officials.

In order to initiate a screen, the Headquarters Program or Regional Office running the partnership program should directly contact the office(s) conducting the screens. Appendix D identifies specific individuals to contact within the various office(s) or Region(s) for requesting screens. Offices requesting screens should provide the name of a contact person in case further information or consultation is needed by the office conducting the screen. In addition, the program office requesting the screen should provide the Office of Criminal Enforcement, Forensics and Training (OCEFT) with the name of a senior manager to contact with sensitive criminal information. Information from OCEFT about planned or pending criminal enforcement actions and investigations may only be transmitted verbally to these senior program managers.

OECA's Office of Planning and Policy Analysis will be available to both Regions and Headquarters for consultation on screening policy issues. The Office of Planning and Policy Analysis (see contact listed in Appendix D) is a central point of contact for compliance screening questions regarding, for example, the process of designing a screen and selecting screening criteria or the interpretation or impact of information received as a result of a screen.

When to Request a Compliance Screen

For eligibility screens (compliance screens conducted prior to a company's or facility's participation in a program), if the partnership program has a defined application period, screens should be requested for a complete list of entities at the end of the application cycle. For programs that have a rolling admission process, managers should request an eligibility screen as soon as each application is received.

For pre-recognition screens (compliance screens conducted before allowing a company to participate in an event), requests for compliance screens should be made as soon as potential recipients are known, and requesters should seek assistance in planning for a screen as early as possible before the event or signing.

Generally, after the screen design has been completed, program managers requesting screens should plan for the process to take approximately four weeks (e.g., the actual screen should be requested at least four weeks in advance of accepting an applicant into a program or prior to an

event recognizing a participant in a program). This month-long period allows time for the initial request to OECA for the IDEA run and criminal check; Regional and DOJ checks; any necessary follow-up; and management-level discussions, if necessary. As discussed below, OECA is committed to providing basic compliance information in about two weeks. Once the initial OECA compliance screen is completed, however, there may be additional information that the program manager feels is necessary or prudent to pursue. Thus, as a general rule, four weeks should be sufficient to cover such additional screening processes.

Generally, offices collecting information will need at least two weeks to produce a basic compliance screen. If more than ten companies or facilities are involved, or if extensive state information is required, then more than two weeks will be needed to conduct investigations and provide the requested information. OECA is committed to providing information as close to within the two-week time frame as possible, depending on the number of screens being requested.

“Menu” for Designing a Compliance Screen Appropriate for the Program

Attachments A and B provide a framework for offices to use when designing and/or reviewing the results of compliance screens. This framework ensures that the design of a compliance screen is commensurate with the incentives offered by and/or claims of the program. The greater the incentives offered by the program or the greater the significance of the claims made about the program participant, the more comprehensive the compliance screen should be. Attachment A applies to Regulatory Flexibility Programs; Attachment B applies to programs with High-Visibility Recognition and/or Broad-Based Claims.

Elements of Compliance Screening

In designing the scope of a screen, the following elements can be used. Different elements provide access to different types of information.

- *IDEA Run.* The Integrated Data for Enforcement Analysis run will check for any planned, pending or ongoing enforcement actions against the company or facility (depending on which entity is applying to the program), and any civil or criminal violations within the past three years (facility-specific or corporate-wide). The IDEA run covers all EPA-administered environmental law. The IDEA database includes a wide variety of information including inspection records and records on: administrative actions; civil judicial actions; criminal convictions; unresolved, unaddressed Significant Noncompliance or Significant Violations (may require follow-up contact with the appropriate Region(s) for recent information not yet in IDEA); violations which resulted in serious threat to human health or the environment or posed imminent and substantial endangerment; referred but not yet filed administrative or judicial actions; and ongoing litigation (pre-judgment or settlement).
- *Criminal Screen.* Screen will check for any corporate criminal conviction or corporate plea; any criminal investigation, conviction or plea involving the applicant within the past

five years; and any ongoing criminal investigation/prosecution of the corporation or a corporate officer. Screen will cover all EPA-administered environmental laws or other statutes used in prosecuting or enforcing environmental crimes (e.g., 18 U.S.C. §1001, etc.).

- *Regional Check.* Screen will check for any planned, pending or ongoing enforcement actions against the company or facility (depending on which entity is applying to the program), especially those which might not appear yet in databases. Screen will collect further information and clarification of the latest status of any enforcement actions. Regions should check with states or refer program to state contact to obtain enforcement information. A regional check could include a review of all the following: civil investigations; planned administrative or judicial actions; outstanding obligation(s) under an order or decree, and status of compliance with such orders or decrees; current status of resolution of enforcement actions or compliance problems; and the current status of any ongoing state enforcement actions.

Note: it is particularly important to screen for state enforcement activity because state-based criminal actions against a potential project participant should be treated no differently than federally-based actions. Undertaking a project with a participant against which a state enforcement action is pending or ongoing would undercut the legitimacy of partnership program state support process. This review should include an update on completed state enforcement actions that might not be included in the IDEA database.

- *DOJ Check.* The Department of Justice will check for available information on civil and criminal enforcement history under all Federal environmental laws, both those administered by EPA and those administered by other Federal agencies (e.g., Endangered Species Act) on a corporate-wide basis.
- *Citizen Suit Information.* Screen will check for citizen suits against the program applicant.
- *Agency Debarment and Suspension List for Procurement and Nonprocurement Programs* (GSA homepage: www.arnet.gov/epl/; updated weekly). Screen will check for companies debarred or suspended from EPA's procurement or nonprocurement programs.

Program Participation and Enforcement Planning

It is important for potential program participants to understand that enforcement activities are independent of participation or expressions of interest in partnership programs. Participation in a partnership program will not result in a participant being singled out for enforcement purposes or immunize a participant from enforcement actions. Screening is not used by the Agency to target enforcement; rather, it is intended to ensure internal consistency between partnership and enforcement efforts and allow the Agency to choose good working partners for participation in its

programs. The use of screening, therefore, should not deter anyone from seeking participation in a partnership program.

ATTACHMENT A:
“MENU” FOR DESIGNING A COMPLIANCE SCREEN FOR REGULATORY FLEXIBILITY PROGRAMS

Timing of Compliance Screening

Eligibility Compliance Screen

In addition to any other eligibility or participation requirements set forth by a program, a compliance screen is required prior to acceptance of participants into a Regulatory Flexibility Program. This type of screen is known as an “eligibility screen.” Regulatory Flexibility Programs should develop eligibility compliance screening requirements consistent with this guidance. Project XL and the Environmental Leadership Program are examples of Regulatory Flexibility Programs that have established their own eligibility screening requirements consistent with the criteria in this guidance.

Pre-Recognition Compliance Screen

Screening conducted prior to participation in a recognition event is known as “pre-recognition” screening. A pre-recognition screen may be required even if an eligibility compliance screen was previously conducted. Specifically, high-visibility recognition (refer to page 3) will require another check near the time of the event. For example, a company or facility participating in Project XL (therefore, already screened for eligibility) that is going to be recognized at a high-visibility event months or years later, should be re-screened before the actual awards event. In this instance, the pre-recognition compliance screen will check to see if any enforcement actions have developed since the first eligibility screen was conducted. A pre-recognition compliance screen would also be required for corporate-wide, high-visibility recognition, where the eligibility screen was originally conducted only for one or more facilities or other sub-corporate entities. For example, a screen should be conducted for a parent company wishing to share in a recognition event, where one of its individual facilities or subsidiaries is the program participant.

Scope of Compliance Screening

The following minimum elements should be included in compliance screens for Regulatory Flexibility Programs:

Eligibility Compliance Screen

- *IDEA Run.* Screen will check for any planned, pending or ongoing enforcement actions against the company or facility (depending on which entity is applying to the program), and any civil or criminal violations within the past three years⁴ (facility-specific or corporate-wide); the IDEA run covers all EPA-administered environmental law.

⁴ The IDEA run reviews a company’s or facility’s civil and certain criminal information available in the database for the past three years. Since the IDEA database alone may not provide a comprehensive criminal screen, a separate criminal screen, conducted by the OCEFT and covering the elements described in this guidance is required for the past five years. Information from OCEFT about planned or pending criminal enforcement actions and investigations can only be transmitted verbally to senior office/program managers.

- *Criminal Screen.* Screen will check for any corporate criminal conviction or corporate plea; any criminal investigation, conviction or plea involving the applicant⁵ within the past five years; and any ongoing criminal investigation/prosecution of the corporation or a corporate officer. Screen will cover all EPA-administered environmental laws or other statutes used in prosecuting or enforcing environmental crimes (e.g., 18 U.S.C. §1001, etc.).
- *Regional Check.* Screen will check for any planned, pending or ongoing enforcement actions against the company or facility (depending on which entity is applying to the program), especially those which might not appear yet in databases. Screen will collect further information and clarification of the latest status of any enforcement actions. Regions should check with states or refer program to state contact to obtain enforcement information.
- *DOJ Check.* Screen will check for available information on civil and criminal enforcement history under all Federal environmental laws, both those administered by EPA and those administered by other Federal agencies (e.g., Endangered Species Act) on a corporate-wide basis.
- *Citizen Suit Information.* Screen will check for citizen suits against the program applicant.
- *Agency Debarment and Suspension List for Procurement and Nonprocurement Programs* (GSA homepage: www.arnet.gov/eplsl/; updated weekly). Screen will check for companies debarred or suspended from EPA's procurement or nonprocurement programs.

Pre-Recognition Compliance Screen

- *Regional Update.* Screen will check for any planned, pending or ongoing enforcement actions against the program participant, especially those actions which might not appear yet in databases. Screen will collect further information and clarification of the latest status of any enforcement actions. Regions should check with states or refer program to state contact to obtain enforcement information.
- *Criminal Update.* Screen will check for updates on any corporate criminal conviction or corporate plea; any criminal investigation, conviction or plea involving the program participant within the past five years; and any ongoing criminal investigation/prosecution of the corporation or corporate officer. Screen will cover EPA-administered environmental laws or other statutes used in prosecuting or enforcing environmental crimes (18 U.S.C. §1001, etc.).

⁵ "Applicant" or "participant" may be defined as a company or facility participating in the partnership program, an employee or manager at the company or facility, or as a corporation or a corporate officer, depending on the type of and purpose for the compliance screen. For instance, in designing a criminal or civil screen, the scope of the screen depends upon the nature of the partnership program (i.e., whether the program makes broad claims about the participant, offers high visibility recognition for the participant) and the purpose for the screen (e.g., whether the parent company is included in a recognition event for a participant-facility).

Use of Compliance Screening Information

Managers should establish ahead of time how they will make decisions based on information received from compliance screens. Certain circumstances make it generally inappropriate to allow a party to participate in the program. The following outlines the minimum effects that screening results should have in both eligibility and pre-recognition situations.

Minimum Effects of Findings for Eligibility Compliance Screens

Participation is inappropriate (OECA concurrence is needed for participation) if the screen shows any of the following:

- C Corporate criminal conviction or plea for violations of federal environmental law involving corporation or corporate officer within the past 5 years.
- C Criminal conviction or plea of employee at same facility for violations of federal environmental law within past 5 years.
- C Ongoing criminal investigation/prosecution of corporation, corporate officer, or employee at same facility for violations of federal environmental law.
- C Unresolved, unaddressed Significant Non-compliance (SNC) or Significant Violations (SV).
- C Planned but not yet filed judicial or administrative action.
- C Ongoing, EPA-initiated litigation.
- C Outstanding obligations under an order or decree that are integrally related to a proposed project.
- C Situations where the applicant is not in compliance with the schedule and terms of an order or decree.
- C Appearance on EPA debarment or suspension list (available on Internet on GSA homepage at www.arnet.gov/epl/; updated weekly).

Programs should recognize that the following enforcement activity is significant; however, participation is not necessarily inappropriate (OECA concurrence is not needed for participation) if the screen shows any of the following:

- C Violations resulting in a serious threat to human health and the environment or an imminent hazard order.
- C Other significant recent violations.
- C Significant problems, or a pattern of significant non-compliance, in a project applicant's overall civil and criminal compliance history, with respect to the full spectrum of Federal environmental laws, when such information is available.
- C Presence of pending or ongoing citizen suits against facility.

Minimum Effects of Findings for Pre-Recognition Compliance Screens

Participation is inappropriate (OECA concurrence is needed for participation) if the screen shows any of the following:

- C Corporate criminal conviction or plea for violations of federal environmental law involving corporation or corporate officer, within the past 5 years.
- C Criminal conviction or plea of employee at same facility for violations of federal environmental law within past 5 years.

- C Ongoing criminal investigation/prosecution of corporation, corporate officer, or employee at same facility for violations of federal environmental law.
- C Unresolved, unaddressed SNC or SV.
- C Planned but not yet filed judicial or administrative action.
- C Ongoing, EPA-initiated litigation.
- C Situations where the applicant is not in compliance with the schedule and terms of an order or decree.

Procedure for Making Exceptions

In unusual circumstances, program managers may believe that an exception should be made, and participation should be allowed even though it would normally be inappropriate. Such decisions should be made at the Assistant Administrator or Regional Administrator level. In cases involving Regulatory Flexibility Programs, the program office should also contact the OECA representative named in Appendix D so that OECA can assist in defining issues of concern and determining the necessary level of OECA management involvement.

Responsibility for Compliance Screening

Eligibility Compliance Screens for Headquarters-Run Programs

The Headquarters Program Office managing the Regulatory Flexibility Program should initiate the screening process once an application has been received. The Headquarters Program Office should contact, with full information about the project applicant's identity and the location of the facilities to be screened, the Office of Compliance (which will check the IDEA database and the Agency debarment list), the appropriate Regional Enforcement contacts designated by the Deputy Regional Administrator (who will check for state information and recent Regional activity that does not appear in IDEA and clarify/update IDEA information), the OCEFT (which will check criminal enforcement sources), and the Department of Justice (which will check databases for all Federal environmental statutes). The Headquarters Program Office should also request information on citizen suits from the applicant.

Eligibility Compliance Screens for Regionally-Run Programs

The Regional Office managing the Regulatory Flexibility Program should initiate the screening process once an application has been received. The Regional Office should perform the IDEA compliance screen, check for state information, and review any information with the appropriate regional enforcement personnel in accordance with the procedures approved by the DRA. The Regional Office should also contact, with full information about the project applicant's identity and the location of the facilities to be screened, OCEFT (which will check HQ and Regional criminal enforcement sources) and the Department of Justice (which will check databases for all Federal environmental statutes), as well as checking the Agency debarment or suspension list (available on Internet on the GSA homepage at www.arnet.gov/epl/; updated weekly). The Regional Office should request information on citizen suits from the applicant.

Pre-Recognition Screens for Headquarters-Run Programs

The Headquarters Program Office managing the Regulatory Flexibility Program should initiate the screening process as soon as it knows about the recognition event. The Headquarters Program

Office should contact the appropriate Regional Enforcement contacts designated by the Deputy Regional Administrator (who will update any recent Regional activity) and OCEFT (which will check HQ and Regional criminal enforcement sources).

Pre-Recognition Screens for Regionally-Run Programs

The Regional Office managing the Regulatory Flexibility Program should initiate the screening process as soon as it knows about the recognition event. The Regional Office should conduct a screen to update any recent Regional activity and contact OCEFT (which will check HQ and Regional criminal enforcement sources).

ATTACHMENT B:
**“MENU” FOR DESIGNING A COMPLIANCE SCREEN APPROPRIATE FOR PROGRAMS WITH
HIGH-VISIBILITY RECOGNITION AND/OR BROAD-BASED CLAIMS**

Timing of Compliance Screening

Compliance screening is required in the two situations described below. Requirements for decisions based on screening results differ slightly and are also described below. Note: All programs are strongly encouraged to make the determination for themselves if screening is appropriate, even when screening is not required.

High-Visibility Recognition

A program must conduct a compliance screen prior to recognition in the context of a high-visibility event (for a definition of “high-visibility recognition,” see page 3). This type of screen is known as a “pre-recognition screen.” A pre-recognition screen is particularly important when a parent corporation wants to participate in a recognition event and the eligibility screen originally conducted focused only on a facility or other sub-corporate entity.

High-Visibility Recognition Combined with Broad-Based Claims

If a program that makes broad-based claims (for a definition of “broad-based claims,” see page 4) about its participants knows that at some point in the program, participants will be recognized in a high-visibility event, then an eligibility compliance screen is required prior to acceptance of participants into the program. If a program that makes broad-based claims about its participants is uncertain about which, if any, of its participants will eventually be recognized in a high-visibility event, then pre-recognition compliance screening is required prior to high-visibility events.

Scope of Compliance Screen

Screening elements chosen should be commensurate with the nature and scope of the claims being made about the program participant. Other than in the situations described below, it is within the discretion of the office managing the partnership program to decide when screening is necessary, what the elements of the screen are, and how the results are used to determine participation.

The following minimum elements should generally be included in compliance screens for partnership programs with “High-Visibility Recognition and/or Broad-Based Claims.” It is suggested that compliance screens for programs with “High-Visibility Recognition Combined with Broad-Based Claims” include a review of compliance history at least as comprehensive as that for Regulatory Flexibility Programs.

Pre-Recognition Compliance Screen for High-Visibility Recognition

A screen with at least the following components should be conducted:

- *IDEA Run.* Screen will check for civil or criminal violations against the company or facility (depending on which entity is applying to the program) within the past three years⁶; screen will cover all EPA-administered environmental law.
- *Regional Check.* Screen will check for any planned, pending or ongoing enforcement actions against the company or facility (depending on which entity is applying to the program), especially those which might not appear yet in databases. Screen will collect further information and clarification of the latest status of any enforcement actions. Regions should check with states or refer program to state contact to obtain enforcement information.
- *Criminal Screen.* Screen will check for any corporate criminal conviction or corporate plea; any criminal investigation, conviction or plea involving the program participant within the past five years; and any ongoing criminal investigation/prosecution of the corporation or corporate officer. Screen will cover all EPA-administered environmental laws or other statutes used in prosecuting or enforcing environmental crimes (e.g., 18 U.S.C. §1001, etc.).

Pre-Recognition Compliance Screen for High-Visibility Recognition Combined with Broad-Based Claims

If a program that makes broad-based claims about its participants is uncertain about which, if any, of its participants will eventually be recognized in a high-visibility event, then pre-recognition compliance screening is required prior to high-visibility events.

- *IDEA Run.* Screen will check for civil or criminal violations against the company or facility (depending on which entity is applying to the program) within the past three years⁷; screen will cover all EPA-administered environmental law.
- *Regional Check.* Screen will check for any planned, pending or ongoing enforcement actions against the company or facility (depending on which entity is applying to the program), especially those which might not appear yet in databases. Screen will collect further information and clarification of the latest status of any enforcement actions. Regions should check with states or refer program to state contact to obtain enforcement information.
- *Criminal Screen.* Screen will check for any corporate criminal conviction or corporate plea; any criminal investigation, conviction or plea involving the program participant within the past five years; and any ongoing criminal investigation/prosecution of the corporation or corporate officer, covering all EPA-administered environmental laws or other statutes used in prosecuting or enforcing environmental crimes (e.g., 18 U.S.C. §1001, etc.).

⁶ See footnote 4.

⁷ See footnote 4.

Eligibility Compliance Screen for High-Visibility Recognition Combined with Broad-Based Claims

If a program that makes broad-based claims about its participants knows that at some point in the program, participants will be recognized in a high-visibility event, then an eligibility compliance screen is required prior to acceptance of participants into the program. The elements of the screen will depend on the exact scope and nature of the claims being made about a participant's environmental status and the type of recognition offered. It is recommended that such a screen include a review of compliance history at least as comprehensive as for Regulatory Flexibility Programs, as follows.

- *IDEA Run.* Screen will check for civil or criminal violations against the company or facility (depending on which entity is applying to the program) within the past three years⁸; screen will cover all EPA-administered environmental law.
- *Regional Check.* Screen will check for any planned, pending or ongoing enforcement actions against the company or facility (depending on which entity is applying to the program), especially those which might not appear yet in databases. Screen will collect further information and clarification of the latest status of any enforcement actions. Regions should check with states or refer program to state contact to obtain enforcement information.
- *Criminal Screen.* Screen will check for any corporate criminal conviction or corporate plea; any criminal investigation, conviction or plea involving the program participant within the past five years; and any ongoing criminal investigation/prosecution of the corporation or corporate officer. Screen will cover all EPA-administered environmental laws or other statutes used in prosecuting or enforcing environmental crimes (e.g., 18 U.S.C. §1001, etc.).
- *DOJ Check.* Screen will check for available information on civil and criminal enforcement history under all Federal environmental laws, both those administered by EPA and those administered by other Federal agencies (e.g., Endangered Species Act) on a corporate-wide basis.

Use of Compliance Screening Information

Managers should establish ahead of time how they will make decisions based on information received from compliance screens, both required and discretionary. Although certain circumstances will make it generally inappropriate to allow a party to participate in a program or high-visibility event, there is significant discretion for decisions on the part of program managers. The following outlines the minimum effects that screening results should have in both eligibility and pre-recognition situations.

Minimum Decisions Resulting from Pre-Recognition Screening for Programs with High-Visibility Recognition

Information resulting from pre-recognition compliance screens should be provided to the Regional Administrator or the Assistant Administrator for the office managing the program, and the

⁸ See footnote 4.

AA/RA should make the decision whether it is appropriate for the participant to be recognized at the event. Generally, recent criminal (within the last five years) and civil (within the last three years) enforcement activity make participation inappropriate. Using the screening elements listed in the following section (Minimum Decisions Resulting from Pre-Recognition or Eligibility Screening for Programs with High-Visibility Recognition Combined with Broad-Based Claims), an office can determine when it is appropriate to defer recognition based on the results of a screen. However, the AA or RA may choose to make an exception in some cases, and OECA concurrence in that decision is not necessary (except for cases involving broad-based claims, as discussed immediately below).

Minimum Decisions Resulting from Pre-Recognition or Eligibility Screening for Programs with High-Visibility Recognition Combined with Broad-Based Claims

Participation is generally not appropriate if the screen shows any of the following:

- C Corporate criminal conviction or plea for violations of federal environmental law involving corporation or corporate officer within the past 5 years.
- C Criminal conviction or plea of employee at same facility for violations of federal environmental law within past 5 years.
- C Ongoing criminal investigation/prosecution of corporation, corporate officer, or employee at same facility for violations of federal environmental law.
- C Unresolved, unaddressed Significant Non-compliance (SNC) or Significant Violations (SV).
- C Planned but not yet filed judicial or administrative action.
- C Ongoing, EPA-initiated litigation.
- C Outstanding obligations under an order or decree that are integrally related to a proposed project.
- C Situations where the applicant is not in compliance with the schedule and terms of an order or decree.

Procedure for Making Exceptions

In unusual circumstances, program managers may believe that an exception should be made, and a particular company or facility (or other organization) should be allowed to participate even though participation would normally be inappropriate. Decisions on such exceptions should be made at the Assistant Administrator or Regional Administrator level. In addition, OECA concurrence is necessary to make an exception for programs with “High-Visibility Recognition Combined with Broad-Based Claims.”

If the situation requiring screening is a high-visibility event, generally, recent criminal (within the last five years) and civil (within the last three years) enforcement activity make participation inappropriate. Pertinent information from the screen should be made available to the AA/RA for the office managing the program, who will decide if participation is acceptable. No OECA concurrence is needed.

In general, if an office that is not required to conduct a compliance screen conducts a screen, it is within the discretion of that office to determine how the results are used to determine participation.

Responsibility for Compliance Screen

All programs with High Visibility Awards and/or Broad-based Claims (HQ and Regional) should directly contact OCEFT, which will check HQ and Regional criminal enforcement sources. In addition, these offices should make other contacts if applicable.

All other partnership programs that wish to conduct compliance screening should make direct contacts if applicable.

ATTACHMENT C

COMPLIANCE SCREENING FOR EPA HEADQUARTERS AND REGIONAL PARTNERSHIP PROGRAMS

Compliance Screening is required for all programs to which one or more of the following situations apply. For programs to which none of the following situations applies, compliance screening is at the discretion of the program managers, in accordance with EPA guidance on compliance screening. NOTE: See text of guidance for detailed description of situations requiring compliance screening.

	Regulatory Flexibility Programs (Eligibility screens needed; Pre-recognition screens may be, depending on situation)	High-Visibility Recognition (Pre-recognition screens needed)	High-Visibility Recognition Combined with Broad-Based Claims (Eligibility and/or pre-recognition screens needed, depending on situation)
What are the Minimum Elements of the Screen that should be Included?	IDEA Run Criminal Screen Regional check DOJ Check Citizen suit info (from applicant) Agency Debarment and Suspension List (For pre-recognition updates, include Regional and Criminal Checks.)	Criminal Screen IDEA Run Regional check (at a minimum, plus other appropriate elements at Program's discretion.)	<i>Minimum Recommended for Eligibility:</i> Criminal Screen IDEA Run Regional check DOJ Check <i>Minimum Recommended for Pre-Recognition:</i> Criminal Screen IDEA Run Regional check
Who Designs Screen?	<u>HQ</u> : Program Office with OECA <u>Region</u> : Regional Office with Regional Senior Enforcement Manager	<u>HQ</u> : Program Office <u>Region</u> : Regional Office	<u>HQ</u> : Program Office <u>Region</u> : Regional Office

	Regulatory Flexibility Programs (Eligibility screens needed; Pre-recognition screens may be, depending on situation)	High-Visibility Recognition (Pre-recognition screens needed)	High-Visibility Recognition Combined with Broad-Based Claims (Eligibility or pre-recognition screens needed, depending on situation)
Who Conducts Screen?	<p><u>Eligibility:</u> <u>HQ:</u> Program initiates by contacting OC (IDEA run & Agency debarment list); OCEFT (criminal); Regional contacts (recent Regional activity that may not appear in IDEA, follow-up on IDEA info, state info) and DOJ (all fed. environmental statutes). Program also contacts applicant for citizen suit information.</p> <p><u>Region:</u> Region does IDEA run, follow-up, & Agency debarment list; directly contacts OCEFT (criminal); and DOJ (all fed. environmental statutes). Program also contacts applicant for citizen suit info.</p> <p><u>Pre-Recognition:</u> <u>HQ:</u> Program contacts Regions (Regional info) and OCEFT (criminal) for all updates. <u>Region:</u> Region does Regional update and contacts OCEFT for criminal updates.</p>	<p><u>HQ:</u> Program makes direct contacts, if applicable.</p> <p><u>Region:</u> Region makes direct contacts, if applicable.</p>	<p><u>HQ:</u> Program makes direct contacts, if applicable.</p> <p><u>Region:</u> Region makes direct contacts, if applicable.</p>

	Regulatory Flexibility Programs (Eligibility screens needed; Pre-recognition screens may be, depending on situation)	High-Visibility Recognition (Pre-recognition screens needed)	High-Visibility Recognition Combined with Broad-Based Claims (Eligibility or pre-recognition screens needed, depending on situation)
<p>Minimum Effects of Findings</p> <p>(What screening results, at a minimum, would make it inappropriate for a company to participate in a program or in an award event?)</p>	<p><u>For Eligibility Screens:</u> Criminal conviction or open criminal investigation. Planned, pending, ongoing civil action. Current debarment.</p> <p><u>For Pre-Recognition Updates:</u> Criminal conviction or open criminal investigation. Planned, pending, ongoing civil action.</p> <p><u>Discretionary factors:</u> Significant non-compliance history. Overall compliance (incl. non-EPA laws). Citizen suits.</p>	<p>Criminal conviction or open criminal investigation. Planned, pending, ongoing civil action</p>	<p>Criminal conviction or open criminal investigation. Planned, pending, ongoing civil action.</p>
<p>Who Makes Decisions to Depart from Policy Based on Results of Screen?</p>	<p>AA/RA-level, with OECA concurrence for exceptions.</p>	<p>AA/RA-level; OECA concurrence is not needed.</p>	<p>AA/RA-level, with OECA concurrence for exceptions.</p>